



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2016-0306]

RIN 1625-AA00

Safety Zone, Cape Fear River; Southport, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the navigable waters of the Cape Fear River near Southport, North Carolina. This temporary safety zone is intended to restrict vessels from a portion of the Cape Fear River during the Barrier Island Challenge Stand Up Paddle Board Race. This action is necessary to protect the safety of race participants when they cross the Lower Swash Channel of the Cape Fear River. Entry into or movement within the safety zone during the enforcement period is prohibited without approval of the Captain of the Port.

**DATES:** This rule is effective on May 7, 2016, from 9:30 am through 11:30 am.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2016-0306 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email LCDR Derek J. Burrill, Waterways Management Division Chief, Sector North Carolina, Coast Guard; telephone (910) 772-2230, e-mail Derek.J.Burrill@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
E.O.	Executive order
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because final details of this event were not provided until April 12, 2016, making it impracticable to publish an NPRM.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because immediate action is needed to protect race participants and spectators from the hazards associated with a paddleboard race.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port North Carolina (COTP) has determined that potential hazards associated with the Barrier Island Challenge Paddle Board Race on May 07, 2016 will be a safety concern when race participants cross the Lower Swash Channel on the Cape Fear River, Southport, North Carolina, a major shipping channel. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone.

### **IV. Discussion of the Rule**

The Coast Guard is establishing a temporary safety zone on the navigable waters of the Lower Swash Channel on the Cape Fear River. The safety zone will encompass all waters within a shape bounded by the following coordinates: 33°55'05" N, 078°00'04" W; 33°54'57" N, 078°00'04" W; 33°54'56" N, 078°00'54" W; 33°55'04" N, 078°00'54" W; thence back to the point of origin (NAD 83) in Southport, North Carolina. This safety zone will be established in the interest of public safety due to the participants crossing the Cape Fear River. This rule will be enforced on May 07, 2016 during the times of 9:30 AM through 11:30 AM, unless otherwise cancelled earlier by the COTP.

Except for vessels authorized by the Captain of the Port or her Representative, no person or vessel may enter or remain in the safety zone during the time frame listed. The Captain of the Port will give notice of the enforcement of the safety zone by all appropriate means to provide the widest dissemination of notice among the affected segments of the public. This will include publication in the Local Notice to Mariners and Marine Information Broadcasts.

### **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive Orders (E.O.s)

related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protestors.

#### A. Regulatory Planning and Review

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under E.O. 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

The primary impact of these regulations will be on limiting all vessels wishing to transit the affected waterways during enforcement of the safety zone on the Cape Fear River within all waters within a shape bounded by the following coordinates: 33°55'05" N, 078°00'04" W; 33°54'57" N, 078°00'04" W; 33°54'56" N, 078°00'54" W; 33°55'04" N, 078°00'54" W; thence back to the point of origin (NAD 83) in Southport, North Carolina on May 07, 2016 from 9:30 AM through 11:30 AM, unless otherwise cancelled by the COTP. Although these regulations prevent traffic from transiting a portion of the Cape Fear River during this event, that restriction is limited in duration, affects only a limited area, and will be well publicized to allow mariners to make alternative plans for transiting the affected area.

#### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental

jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and

have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone to limit vessels within all waters within a shape bounded by the following coordinates: 33°55'05" N, 078°00'04" W; 33°54'57" N, 078°00'04" W; 33°54'56" N, 078°00'54" W; 33°55'04" N, 078°00'54" W; thence back to the point of origin (NAD 83) in Southport, North Carolina on May 07, 2016 from 9:30 AM through 11:30 AM to protect life and property of mariners from the hazards associated with the event. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard temporarily amends 33 CFR part 100 as follows:

#### **PART 100-- SAFETY OF LIFE ON NAVIGABLE WATERS**

1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233

2. Add § 100.35-T05-0306 to read as follows:

100.35-T05- 0306 Safety Zone, Cape Fear River; Southport, North Carolina

(a) Definitions. For the purposes of this section, Captain of the Port means the Commander, Sector North Carolina.

Representative means any Coast Guard commissioned, warrant or petty officer who has been authorized to act on the behalf of the Captain of the Port.

(b) Location. The following area is a safety zone: specified waters of the Captain of the Port Sector North Carolina zone, as defined in 33 CFR 3.25-10, all waters of the Cape Fear River within a shape bounded by the following coordinates: 33°55'05" N, 078°00'04" W; 33°54'57" N, 078°00'04" W; 33°54'56" N, 078°00'54" W; 33°55'04" N, 078°00'54" W; thence back to the point of origin (NAD 83) in Southport, North Carolina.

(c) Regulations. (1) In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, North Carolina or her designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) If on scene proceed as directed by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, North Carolina can be reached through the Sector North Carolina Command Duty Officer at Sector North Carolina in Wilmington, North Carolina at telephone number (910) 343-3882.

(4) The Coast Guard Representatives enforcing the safety zone can be contacted on VHF-FM marine band radio channel 13 (165.65 Mhz) and channel 16 (156.8 Mhz).

(d) Enforcement period. This section will be enforced on May 07, 2016, from 9:30am



through 11:30 am, unless otherwise cancelled by the COTP.

Dated: April 19, 2016

J. S. Dufresne  
Captain, U.S. Coast Guard  
Captain of the Port North Carolina

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